PUBLIC UTILITIES COMMISSION
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298

September 16, 2003 Agenda ID #2730
Ratesetting

TO: PARTIES OF RECORD IN APPLICATION 00-11-038 ET AL.

This is the draft decision of Administrative Law Judge (ALJ) Pulsifer. It will not appear on the Commission's agenda for at least 30 days after the date it is mailed. The Commission may act then, or it may postpone action until later.

When the Commission acts on the draft decision, it may adopt all or part of it as written, amend or modify it, or set it aside and prepare its own decision. Only when the Commission acts does the decision become binding on the parties.

Parties to the proceeding may file comments on the draft decision as provided in Article 19 of the Commission's "Rules of Practice and Procedure." These rules are accessible on the Commission's website at http://www.cpuc.ca.gov. Pursuant to Rule 77.3 opening comments shall not exceed 15 pages. Finally, comments must be served separately on the ALJ and the assigned Commissioner, and for that purpose I suggest hand delivery, overnight mail, or other expeditious method of service.

A courtesy copy of the draft decision is being served also on the municipalities that participated in the workshop on municipal fees or that commented on the workshop report.

/s/ ANGELA K. MINKIN
Angela K. Minkin, Chief
Administrative Law Judge

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Attachment

Decision **DRAFT DECISION OF ALJ PULSIFER (Mailed 9/16/2003)**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Southern California Edison Company (E333-E) for Authority to Institute a Rate Stabilization Plan with a Rate Increase and End of Rate Freeze Tariffs.	Application 00-11-038 (Filed November 16, 2000)
Emergency Application of Pacific Gas and Electric Company to Adopt a Rate Stabilization Plan. (U 39 E)	Application 00-11-056 (Filed November 22, 2000)
Petition of THE UTILITY REFORM NETWORK for Modification of Resolution E-3527.	Application 00-10-028 (Filed October 17, 2000)

OPINION ON MUNICIPAL FEE REMITTANCE METHODOLOGY RELATING TO ELECTRICITY SALES BY CALIFORNIA DEPARTMENT OF WATER RESOURCES

I. Background

This decision resolves issues regarding the collection and remittance of municipal surcharge fees in connection with electric power sales of the California Department of Water Resources (DWR) pursuant to Assembly Bill (AB) 1 of the First Extraordinary Session (Stats. 2001, Ch. 4), hereafter referred to as AB1X. In Decision (D.) 03-02-032, we addressed issues relating to the manner in which municipalities are to be compensated associated with revenues attributable to DWR-supplied power. We required in D.03-02-032 that the investor-owned utilities (i.e., Pacific Gas & Electric Company (PG&E), Southern California Edison

Company (SCE), and San Diego Gas & Electric Company (SDG&E)) continue to remit funds to the municipalities for DWR sales as prescribed in D.02-02-052, but clarified that such remittances are properly classified as municipal surcharges under the provisions of Code Sections 6352-6354.1, rather than "franchise fees" under Sections 6000-6302.

D.02-02-052 allocated the DWR revenue requirement among customers in the service territories of the IOUs. During the course of those proceedings, however, a dispute arose involving whether, or on what basis, franchise fees may be assessed, collected, and remitted to municipalities for electric power sales made by DWR to customers pursuant to AB1X. D.02-02-052 directed the assigned Administrative Law Judge (ALJ) to take comments on these issues as a basis for further Commission action.

An ALJ's ruling, issued on April 3, 2002, solicited comments on the above-referenced issues. After review and deliberation of comments received, the Commission issued D.03-02-032. In D.03-02-032, we ordered the utilities to treat DWR like other third-party suppliers and to use the municipal surcharge approach specified in Pub. Util. Code §§ 6352-6354.1 for calculating the fees to be collected and remitted to municipalities. In D.03-02-032, we noted that PG&E had raised questions as to whether amounts it previously remitted to municipalities based on DWR sales revenues represented the correct amounts due. PG&E claimed that it did not have enough information based on the requirements of D.03-02-032 to calculate the correct municipal surcharge remittance amount due to each municipality. Because PG&E could not verify if it had made the proper remittances for its past obligations to each municipality, we reserved judgment in D.03-02-032 concerning the extent to which PG&E may

need to recalculate surcharge revenues related to past collections of DWR revenues.

In D.03-02-032, we granted PG&E's request for a workshop to discuss technical issues regarding the calculation of proper remittances of surcharges to municipalities for electric power sales by DWR. Because the workshop issues identified by PG&E were specific to it, SCE and SDG&E were not required to participate in the workshop

In addition to parties to this proceeding, notice of the workshop was served on affected municipalities. The workshop was held on April 15, 2003. The workshop also addressed issues as to the method PG&E was using to make prospective remittances of municipal surcharges related to DWR revenues. Based on its interpretation of Pub. Util. Code § 6353(d),[1] PG&E proposed to calculate and remit municipal surcharges relating to DWR power by multiplying the franchise fee percentage factor adopted from its last General Rate Case by DWR revenues. During the workshop process, it was noted that there might be inconsistencies between PG&E's proposed remittance calculation and that implemented by SCE and SDG&E based on differing interpretations of the applicable statutory provisions.

[1] Section 6353(d) states, "Determine the surcharge applicable to each transportation customer by multiplying the product determined pursuant to subdivision (c) by the sum of the franchise fee factor plus any franchise fee surcharge authorized for the energy transporter as approved by the commission in the energy transporter's most recent proceeding in which those factors and surcharges were set. An energy transporter not regulated by the commission shall multiply the product determined in subdivision (c) by the franchise fee rate contained in its individual franchise agreement in effect in each municipality."

PG&E filed and served a written status report on the results of the workshop on May 2, 2003. In addition to the service list of this proceeding, PG&E was directed to serve a copy of its workshop report on municipalities within its service area.

An ALJ ruling issued on May 29, 2003 provided parties, as well as affected municipalities, notice and opportunity to comment on the workshop report. In addition to parties on the service list, the ruling was mailed to municipalities that were previously notified regarding the workshop with an opportunity for their review and comment.

In particular, comments were solicited on what obligations, if any, PG&E has to determine and remit and/or refund additional municipal fees for periods prior to 2003 based upon the use of the prospective 2003 methodology. To the extent any parties believe that additional information is needed to resolve outstanding issues, they should specify what additional information is needed and what process they would propose to produce that information.

In addition, parties were to address the issue of uniformity and consistency among the utilities in the methodology and process for applying the applicable statutes for calculating and remitting municipal surcharge fees. To the extent there are differences in calculation or remittance methodologies among the utilities, or differences in interpretation of the statutes as to collection and remittance of fees, parties were to address what revisions are warranted in order to bring each of the utilities into uniform compliance with applicable statutory provisions as discussed in D.03-02-032. Parties should address whether the utilities should be required to recalculate prior remittances to municipalities based upon a determination of the adopted prospective remittance methodology prescribed in D.03-02-032.

II. Positions of Parties

Formal comments on the workshop report were filed by municipal interests representing the City of San Jose (San Jose) and the League of California Cities (League). Informal letters were sent by the City of Sunnyvale (Sunnyvale), the City of Vacaville (Vacaville) and by Contra Costa County (Contra Costa).[2] PG&E, SCE and SDG&E also filed comments on the workshop report.

Sunnyvale registered dissatisfaction with the notification process for the PG&E workshop, claiming that the workshop was poorly noticed and poorly attended. Sunnyvale also expressed objection to D.03-02-032, based on Sunnyvale's belief that it would not receive the franchise fees to which it was entitled. Sunnyvale requested an immediate deferral of implementation of D.03-02-032 pending what it characterized as "properly noticed and conducted hearings."

Vacaville is concerned that PG&E's proposed methodology of calculating franchise payments to municipalities is inconsistent with the methodologies used by SCE and SDG&E. Although Vacaville would stand to benefit slightly from PG&E's proposal, it is concerned that other municipalities within PG&E's service area would stand to loose a significant amount of franchise fee revenue if the proposed change is implemented. Vacaville feels strongly that there should be uniform application of the Commission rules governing both the collection and remittance of franchise fee amounts, and not left to differing interpretations by the utilities. Given the statewide magnitude of the dollar amounts involved and the importance of franchise fee revenue to municipalities, Vacaville feels more

[2] The informal letters will be made a part of the correspondence file of this proceeding.

time and consideration needs to be given to this important matter perhaps in the form of additional workshops, and that better notification of affected agencies be provided.

Contra Costa argues that PG&E should calculate surcharge revenues using the same percentage factor it uses for payment of franchise fees on other revenues which applies a "G-SUR" rate. Contra Costa computes that it would receive approximately 21.55% more surcharge revenues using the actual G-SUR rate compared to the 0.6% rate proposed by PG&E. Contra Costa also requested that PG&E provide definitions of various terms used by PG&E during the workshop in describing its proposed calculation approach. Contra Costa also requested that PG&E provide detailed support for its projected 2003 surcharge revenue from DWR sources applicable to Contra Costa.

The League believes that California cities need to better understand the statutory methodology for calculating the municipal surcharge due cities on DWR sales, and understand how each utility calculates the surcharge based on their interpretation of the applicable statutory provisions. To accomplish this, the League recommends that a workshop be held with representatives from each of the utilities, the Commission and local governments in each of the service areas. The League is concerned about the notification process and the disproportionately small number of government representatives that attended the April workshop, and propose to facilitate distribution of materials and notification of any further workshop on the surcharge fee calculation.

In its formal comments, San Jose claims that PG&E's workshop report should be disregarded because the workshop exceeded the limited scope of issues that were authorized to be addressed therein, as determined by ALJ ruling. San Jose contends that the workshop was granted for the sole purpose of

resolving deficiencies in the billing system of PG&E relating to its ability to calculate DWR revenues. Instead, San Jose claims, PG&E used the workshop as an opportunity to attempt to recalculate the surcharges owed to the cities.

PG&E disputes San Jose's claim that its Workshop Report goes beyond the scope of issues for which the workshop was ordered. PG&E notes that the workshop was not simply intended to address billing system deficiencies, but also the amount of DWR-supplied power, the cost of that power, and the factor to be applied to the resulting revenues. PG&E also notes that the workshop notice specifically identified the question of how remittances are to be calculated as one of the discussion topics.

San Jose contends that PG&E's approach would deprive that municipality of almost 70% of the surcharge revenue due it, by applying a factor of 0.006368 rather than the 2% called for under its franchise agreement. San Jose argues that there is no credible basis for PG&E to deviate from the 2% obligation that is called for under its franchise agreement.

San Jose asserts that PG&E's proposed methodology directly contravenes state law and D.03-02-032 based on its interpretation of legislative intent behind the municipal surcharge to protect revenues to municipalities as gas and electric service to retail customers was opened to non-utility suppliers. PG&E does not view the general intent of the municipal surcharge as necessarily requiring that remittance levels exactly equal what would have gone to municipal entities if utility service had not been unbundled. Instead, PG&E argues, Section 6353 identifies certain elements to be used in the calculation of the surcharge

amounts.[3] Specifically, Section 6353(d) sets the surcharge fee at the level adopted by "the commission in the energy transporter's most recent proceeding in which those factors and surcharges were set." This statutory language provides a specific reference for where the rate is set and who sets the rate, i.e. the most recent adopted rate set by the Commission.

PG&E believes its interpretation of D.03-02-032 conforms with the Commission's findings and the law. The Commission found that the franchise statutes did not apply, but that municipal surcharge statutes do. Thus, PG&E has looked to Section 6353 for guidance in implementing the municipal surcharge under D.03-02-032. And the applicable statutory language requires the utility transporter to use the last commission adopted franchise fee surcharge for the utility. When the Commission authorizes a modified or new methodology for the surcharge, PG&E believes that new factor will become the proper one to use under Section 6353.

San Jose argues that PG&E should not recalculate surcharge remittances prior to 2003 paid to municipal entities. PG&E agrees that it should not recalculate prior surcharge payments, but disagrees with the reasoning offered by San Jose. PG&E believes that when payments have been made in the past, they have been proper under the decisions in effect at the time. For instance, prior to D.03-02-032, PG&E remitted surcharges to municipal entities per the rate prescribed for each individual municipality in their respective franchise agreement. PG&E believes that because the approach it followed was required

[3] For instance, Section 6353(b) describes the gas and electric commodity cost components that should be used to price gas and electric commodity in the surcharge calculation.

on an interim basis by D.02-02-052, payments made pursuant to that Decision should not be recalculated. PG&E's next payment, for 2003, will not be due until early 2004. At that time, PG&E agrees to employ whatever method the Commission directs to be used for the payment to be made in 2004.

SCE and SDG&E agree with PG&E's interpretation of D.03-02-032 that the *calculation and collection* of franchise fees from retail customers relating to DWR charges should be based on the franchise fee factor adopted in each utility's general rate case. SCE and SDG&E disagree, however, with PG&E's interpretation as to the *remittance* of surcharges to municipalities relating to DWR revenues. While PG&E would use the same general rate case franchise fee factor for calculating the municipal surcharge fee due to each municipality, SDG&E and SCE, by contrast, believe Pub. Util. Code §§ 6352(d)[4] and 6354(b)[5] require them to remit surcharges to municipalities per the rate prescribed for each individual municipality in their respective franchise agreement. The SCE/SDG&E methodology includes DWR revenues in the calculation of franchise fees as if the DWR charges were part of the utility's gross revenues.

Prior to issuance D.03-02-032, PG&E used the SCE/SDG&E approach. PG&E believes that that approach was required, on an interim basis, by

[4] Section 6352(d) states, "Nothing in this chapter shall in any way affect the rights of the parties to existing franchise agreements executed pursuant to this division that are in force on the effective date of this chapter."

[5] Section 6354(b) states in part, "Surcharges collected from the transportation customer shall be remitted to the municipality granting a franchise pursuant to this division in the manner and at the time prescribed for payment of franchise fees in the energy transporter's franchise agreement."

D.02-02-052. There does not appear to be any disagreement on the approach that was to be used prior to D.03-02-032.

PG&E has interpreted D.03-02-032 differently from SCE and SDG&E. PG&E expresses no objection to the SCE/SDG&E interpretation so long as the Commission makes it clear that the SCE/SDG&E approach is the approach the Commission wants PG&E to take in remitting municipal surcharges for electric power sales by DWR. PG&E believes there is a value in using a consistent approach for all of the power provided by DWR to the customers of the state's electric utilities.

If the Commission directs PG&E to use the SCE/SDGE approach, this will not create any difficulties in the payment of the appropriate amounts to cities and counties. For 2002, PG&E made its payments pursuant to D.02-02-052, which adopted the SCE/SDG&E method on an interim basis. Payments for 2003 will not be due until early 2004, so PG&E agrees to employ whatever method the Commission directs for that payment.

Regardless of what method it directs be used, PG&E asks that the Commission make clear that if the adopted approach is successfully challenged in court, that should not create any disallowance that would fall upon the utility's shareholders.

PG&E does not believe any more workshops or other investigative activities are necessary[6] for the Commission to make its final determination, particularly if the Commission adopts the SCE/SDG&E approach. The essence of that approach is that DWR revenues are treated as PG&E revenues for calculation of payments to cities and counties. The effect is that payments to cities and counties are unaffected by the fact that DWR is providing some of the power consumed by the utilities' customers.

III. Discussion

We conclude that PG&E's interpretation of D.03-02-032 and of the pertinent statutory language regarding the method of remittances of municipal surcharge fees to individual municipalities is improper. D.03-02-032 determined

[6] PG&E commits to continue to work with cities and counties, as discussed in the League's comments, to enable them to understand how PG&E calculates the payments PG&E makes to them. Commission-sponsored workshops are not necessary, or appropriate, for this purpose.

that for purposes of meeting their franchise obligations to municipalities associated with DWR power, the utilities were to make remittances in the form of municipal surcharges under the provisions of Code Sections 6352-6354.1, rather than "franchise fees" under Sections 6000-6302.

In seeking to implement D.03-02-032, PG&E focused on language in Section 6353(d) which bases the surcharge factor on the most recent commission determination of franchise fees for the "energy transporter" (i.e., the utility acting on behalf of DWR):

> ". . .the franchise fee factor plus any franchise fee surcharge authorized for the energy transporter **as approved by the commission in the energy transporter's most recent proceeding** in which those factors and surcharges were set." (Section 6353 (d), emphasis added.)

PG&E thus proposed to apply the most recent Commission adopted franchise fee percentage from its 1999 GRC Decision to calculate the municipal surcharge on DWR power to be paid to municipal entities, applied uniformly to all of its franchisor municipalities. Under PG&E's approach, the uniform factor would be applied irrespective of the terms of any individual franchise agreements and the contractual franchise fee percentage explicitly stated therein.

We conclude that while PG&E is correct in its interpretation with respect to calculating the total revenues *collected* from customers that is attributable to the municipal surcharge obligation, PG&E is incorrect with respect to the calculation of *remittances* due to each individual municipality. The provisions of the municipal surcharge do not change the rights of municipalities to receive revenues at the same level that apply under the provisions of franchise fees. As stated in Section 6352(d): "Nothing in this chapter shall in any way affect the

rights of parties to existing franchise agreements executed pursuant to this division that are in force on the effective date of this chapter."

Accordingly, PG&E's proposed method would unduly deprive municipalities of remittances to which they are entitled under the statutes. PG&E shall be required to remit municipal surcharge revenues in accordance with the remittance requirements specified in each respective franchise agreement on a consistent basis with the remittance method already being utilized by SCE and SDG&E. Rather than simply applying a weighted average remittance rate to every municipality, PG&E shall remit surcharge fees to each municipality utilizing the same percentage factor that is specified in the specific franchise agreement applicable to the franchisor municipality in question. PG&E shall not simply apply a uniform average factor to all municipalities based on its 1999 GRC. Such an approach as contemplated by PG&E violates the statutory provisions of Section 6350 governing the municipal surcharge that specify that the surcharge will "replace, but not increase, franchise fees that would have been collected…"

By using a simple average remittance rate, PG&E would necessarily remit municipal surcharges that exceed the comparable franchise fees for some municipalities and fees that fall short for others. The proper application of the statute should provide the same level of remittances to the municipality as they would have received under the franchise fee formula. By adopting this approach, each of the three utilities shall both collect and remit municipal surcharges on a consistent basis.

The correction in PG&E's remittance methodology as adopted in this order addresses the concerns raised by various municipalities relating to their receipt of proper levels of municipal surcharges relating to DWR revenues.

Accordingly, we conclude that no further rounds of comments or workshops are necessary to resolve issues relating to PG&E's prospective municipal remittances. Likewise, no further workshops are necessary to address the issue of retroactive calculations or adjustments to prior period municipal surcharge fees.

The correction in remittance methodology ordered in this decision applies to PG&E's remittances for the years 2003 and forward. Since PG&E was using the proper remittance methodology prior to the issuance of D.03-02-032 on a consistent basis with that used by SCE and SDG&E, municipalities have already received the proper level of municipal surcharge remittances from PG&E for years prior to 2003. Thus, there is no need for PG&E to recalculate any past remittances to municipalities for periods prior to 2003 as a result of this order.

IV. Comments on the ALJ Draft Decision

The Draft Decision of Administrative Law Judge Thomas R. Pulsifer was filed and served on parties on _____. Comments on the Draft Decision were filed on _____, and reply comments were filed on _____.

V. Assignment of Proceeding

Loretta M. Lynch and Geoffrey F. Brown are the Assigned Commissioners and Thomas R. Pulsifer is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. In D.03-02-032, the Commission determined that each of the IOUs shall bear responsibility for making remittances to municipalities for DWR revenues under the provisions of the municipal surcharge set forth in Pub. Util. Code §§ 6350 *et seq.*

2. In response to questions raised by PG&E concerning how to determine the proper amounts to be remitted to each municipality in compliance with D.03-02-032, a workshop was held.

3. Because prior to 2003, PG&E made its municipal surcharge payments pursuant to D.02-02-052, which adopted the SCE/SDG&E method on an interim basis, no retroactive adjustment for remittances to municipalities are necessary.

4. After issuance of D.03-02-032, PG&E employed a different method for determining the level of municipal surcharge fees applicable to 2003 revenues due to individual municipalities relating to DWR revenues; PG&E's method was inconsistent with the methodology used by SCE and SDG&E.

5. PG&E's proposed approach for remittances is simply to apply the Commission adopted surcharge percentage from its 1999 GRC Decision to calculate and remit the municipal surcharge fee on DWR power to be paid to each municipal entity.

6. Section 6352(d) states, "Nothing in this chapter shall in any way affect the rights of the parties to existing franchise agreements executed pursuant to this division that are in force on the effective date of this chapter."

7. PG&E's proposed remittance methodology for municipal fees due pursuant to D.03-02-032 would affect the rights of municipal parties to individual franchise agreements by increasing the fees otherwise due to some municipalities while reducing the fees due to others.

8. Municipal surcharge payments for 2003 will not be due from PG&E until early 2004.

9. PG&E agrees to employ whatever method the Commission directs be used for the municipal surcharge payment due in 2004.

Conclusions of Law

1. The method proposed by PG&E for determining the level of municipal surcharge fees due to individual municipalities pursuant to D.03-02-032 is improper and does not comply with the statutory provisions of Section 6350.

2. Remittance of municipal surcharge fees based on a weighted average factor developed in PG&E's last general rate case would be inconsistent with Section 6350 governing the municipal surcharge, specifying that the surcharge will "replace, but not increase, franchise fees that would have been collected…"

3. PG&E should calculate and remit municipal surcharge fees due to individual municipalities for 2003 and subsequent years pursuant to D.03-02-032 on a consistent basis with the approach already being used by SCE and SDG&E and by applying the specific franchise factor called for under the applicable franchise agreement for each individual municipality.

4. No retroactive calculation is necessary for remittances paid by PG&E to municipalities attributable to DWR revenues for years prior to 2003 since PG&E was already using the appropriate remittance method for those prior periods.

5. No further workshops or other filings are necessary for PG&E to implement the necessary corrections to its accounting and cash disbursement systems in order to comply with this order.

O R D E R

IT IS ORDERED that:

1. Pacific Gas & Electric Company (PG&E) shall implement necessary corrections to its accounting and disbursement systems to calculate and remit municipal surcharge fees to each municipality pursuant to Decision 03-02-032 for 2003 and subsequent years based upon the prescribed rates called for in the respective franchise agreement applicable to each municipality, and on a basis consistent with the remittance methodology already being employed by Southern California Edison Company and San Diego Gas & Electric Company.
2. No retroactive calculations of municipal surcharge fees due by PG&E to municipalities shall be made for periods prior to 2003.

This order is effective today.

Dated _____, at San Francisco, California.